

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**DAVID T. AND LELAND J.
BARCHANOWICZ,**

Plaintiffs,

v.

*** CASE NO. 1:05-CV-1232**

**FREIGHTLINER TRUCKS OF
DOTHAN, INC., DAIMLERCHRYSLER
SERVICES NORTH AMERICA LLC,
ET AL.,**

Defendants.

ANSWER OF DEFENDANT FREIGHTLINER TRUCKS OF DOTHON, INC.

COMES NOW Freightliner Trucks of Dothan, Inc., a dissolved Alabama corporation ("Defendant"), and files this its Answer to the Complaint as follows:

1. Defendant admits the allegations of paragraph 1 of the Complaint.
2. Defendant admits that it is dissolved Alabama corporation and is not, therefore, in existence.
3. Defendant admits the allegations of paragraph 3 of the Complaint.
4. Defendant denies the allegations of paragraph 4 of the Complaint.
5. These allegations are not directed to Defendant and thus require no response.
6. Defendant avers that the United States District Court for the Middle District of Alabama has jurisdiction.

7. Defendant denies that venue is proper with the filing of this action since it was dissolved in the year 2000 and has not been reincorporated. Defendant denies the remaining allegations in paragraph 7 of the Complaint.

8. Defendant denies each and every other material allegation contained in paragraphs 8 through 56 of the Complaint and demands strict proof thereof.

9. Defendant denies Plaintiffs' demand for relief and demands strict proof thereof.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Plaintiffs' Complaint is barred for reason that the Complaint, and each count thereof, separately and severally, fail to state a claim against Defendant upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred for reason of the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred for reason of settlement.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred for reason of waiver.

FIFTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred for reason of ratification.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred for reason of a supervening intervening cause not caused by Defendant nor under the control of Defendant.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred for reason of the fact that Plaintiffs' contributory negligence was a cause of the alleged damages to Plaintiffs.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are due to be dismissed and/or transferred for reason of incorrect venue.

NINTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred for reason of lack of consideration.

TENTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred for reason of estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred for reason of the fact that Plaintiffs assumed the risk of the alleged damages to Plaintiffs.

/s/ Dow T. Huskey
Dow T. Huskey
Attorney for Defendant
Freightliner Trucks of Dothan, Inc.
P. O. Drawer 550
Dothan, AL 36302
T: (334) 794-3366
F: (334) 794-7292

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of February, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

C. Lee Reeves, Esq.
Sirote & Permutt, P.C.
2311 Highland Avenue South
P. O. Box 55727
Birmingham, AL 35255-5727

Gregory B. McCain, Esq.
Law Office of Gregory B. McCain, P.C.
204 North Lena Street
P. O. Box 1331
Dothan, AL 36302
W. Todd Harvey, Esq.
Whatley Drake, L.L.C.
2323 2nd Avenue North
Birmingham, AL 35203

David E. Rains, Esq.
Tanner & Guin LLC
2711 University Blvd.
P. O. Box 3206
Tuscaloosa, AL 35403-3206

/s/ Dow T. Huskey
Dow T. Huskey